

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 31, 2009

Charles R. Fulbruge III
Clerk

No. 09-40210
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GEORGE RICHARD CHAPMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:08-CR-619-1

Before JOLLY, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

A jury found George Richard Chapman guilty of possession with intent to distribute 5.9 kilograms of cocaine. He now appeals his conviction and resulting 121-month prison sentence. Chapman argues that, in light of the recent Supreme Court decision in *Flores-Figueroa v. United States*, 129 S. Ct. 1886 (2009), the evidence was insufficient to support his conviction because the Government did not prove beyond a reasonable doubt that he knew the specific

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

type and quantity of controlled substance he possessed. In the alternative, Chapman asserts that the district court plainly erred in failing to instruct the jury that it had to find that he knew the specific type and quantity of drug he possessed.

These issues are foreclosed by current circuit precedent, *see United States v. Gamez-Gonzalez*, 319 F.3d 695, 699-700 (5th Cir. 2003) (holding that knowledge of drug type or quantity is not an element of an offense under 21 U.S.C. § 841), which has not been overruled by *Flores-Figueroa*. *See United States v. Betancourt*, 586 F.3d 303, 308-09 (5th Cir. 2009). Accordingly, the judgment of the district court is AFFIRMED.